

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
LOGAN COUNTY**

STATE OF OHIO,

CASE NO. 8-25-19

PLAINTIFF-APPELLEE,

v.

TERRY L. DAVIS,

**OPINION AND
JUDGMENT ENTRY**

DEFENDANT-APPELLANT.

**Appeal from Logan County Common Pleas Court
General Division
Trial Court No. CR 25 06 0093**

Judgment Affirmed

Date of Decision: September 28, 2026

APPEARANCES:

***Brian A. Smith* for Appellant**

***Eric C. Stewart* for Appellee**

MILLER, J.

{¶1} Defendant-appellant, Terry L. Davis (“Davis”), appeals the September 10, 2025 judgment of sentence of the Logan County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} On May 26, 2025, a spectator at a Memorial Day parade observed a man, later identified as Davis, taking photographs of the buttocks of young girls. An investigating officer confronted Davis and asked to see the photographs on his phone, and observed a photograph zoomed in on the buttocks of a young girl at the parade. Davis consented to further review of the phone’s contents, and officers uncovered hundreds of photographs and screenshots of minor girls in a state of nudity or engaging in sexual acts.

{¶3} On June 10, 2025, the Logan County Grand Jury indicted Davis on 25 counts of pandering sexually-oriented matter involving a minor or impaired person in violation of R.C. 2907.322(A)(5), fourth-degree felonies. Davis initially entered not-guilty pleas to the indictment.

{¶4} Davis appeared for a change-of-plea hearing on August 5, 2025, wherein he withdrew his pleas of not guilty and entered guilty pleas to all 25 counts. The trial court accepted Davis’s guilty pleas and found him guilty.

{¶5} At a sentencing hearing on September 9, 2025, the trial court sentenced Davis to 12 months in prison on each count. Further, the court ordered Counts One

through Sixteen to be served consecutively to each other and Counts Seventeen through Twenty-Five to be served concurrently to each other and concurrently to Counts One through Sixteen for an aggregate term of 16 years in prison. Davis was also informed of his duty to register as a Tier II sex offender.

{¶6} Davis filed a timely notice of appeal. He raises two assignments of error for our review.

First Assignment of Error

The trial court committed plain error in failing to merge Counts One through Twenty-Five of the Indictment for purposes of sentencing, as Counts One through Twenty-Five of the Indictment constituted allied offenses of similar import under R.C. 2941.25, in violation of Appellant's right against Double Jeopardy under the Fifth and Fourteenth Amendments to the United States Constitutions and Article I, Section 10 of the Ohio Constitution.

Second Assignment of Error

Because the record does not support the trial court's findings pursuant to R.C. 2929.14(C)(4), the trial court's imposition of consecutive sentences was, by clear and convincing evidence, not supported by the record.

{¶7} On appeal, Davis raises two challenges to his sentence. First, he argues that the trial court erred by not merging the 25 counts of pandering sexually-oriented matter involving a minor or impaired person. Second, Davis alleges that his consecutive sentences were not supported by the record.

{¶8} We first address Davis’s argument that the trial court erred by not merging his sentences for each of the 25 counts.

Allied-Offenses Review

{¶9} We review de novo whether offenses are allied offenses of similar import. *State v. Tall*, 2023-Ohio-1853, ¶ 7 (3d Dist.). “De novo review is independent, without deference to the lower court’s decision.” *State v. Hudson*, 2013-Ohio-647, ¶ 27 (3d Dist.).

R.C. 2941.25, Ohio’s multiple-count statute, provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶10} The Supreme Court of Ohio has directed the use of a three-part test to determine whether a defendant can be convicted of multiple offenses:

As a practical matter, when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when the defendant’s conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered.

State v. Ruff, 2015-Ohio-995, ¶ 31.

{¶11} “[T]wo or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant’s conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.” *Id.* at ¶ 23. “At its heart, the allied-offense analysis is dependent upon the facts of a case because R.C. 2941.25 focuses on the defendant’s conduct.” *Id.* at ¶ 26. “[A] defendant’s conduct that constitutes two or more offenses against a single victim can support multiple convictions if the harm that results from each offense is separate and identifiable from the harm of the other offense.” *Id.*

{¶12} The term “animus” means “purpose or, more properly, immediate motive.” *State v. Logan*, 60 Ohio St.2d 126, 131 (1979), *abrogation recognized in Ruff*. “Like all mental states, animus is often difficult to prove directly, but must be inferred from the surrounding circumstances.” *Id.* “Thus, the manner in which a defendant engages in a course of conduct may indicate distinct purposes.” *State v. Whipple*, 2012-Ohio-2938, ¶ 38 (1st Dist.). “Courts should consider whether facts appear in the record that ‘distinguish the circumstances or draw a line of distinction that enables a trier of fact to reasonably conclude separate and distinct crimes were committed.’” *Id.*, quoting *State v. Glenn*, 2012-Ohio-1530, ¶ 9 (8th Dist.).

Analysis: Merger

{¶13} Davis argues that all 25 of his charges for pandering sexually-oriented matter involving a minor or impaired person should have merged because they charged the same offenses, bore the same offense date, and were based on possession of images found on the same phone. Davis also contends that the State did not establish a specific number of victims and, accordingly, the trial court is prevented from a finding of separate and identifiable harm under the merger doctrine. Davis admits that his trial counsel did not object to the refusal to merge at the sentencing hearing, so Davis frames the issue as plain error.

{¶14} The State replies that Davis forfeited the merger issue by failing to object at sentencing and that review is limited to plain error review. With respect to the merits, the State argues that Ohio courts have repeatedly held that multiple counts of pandering sexually-oriented matter involving separate images or files do not merge because each image or file reflects a separate animus and separately identifiable harm.

{¶15} After reviewing the record, we find that the trial court did not err by not merging the 25 charges of pandering sexually-oriented matter involving a minor or impaired person. The record reveals that hundreds of sexually-explicit images and videos of minor females were found on Davis's phone, but the 25 counts in the indictment were based on 25 specific images of prepubescent minors engaged in

sexual conduct. The PSI described the images as various sex acts with different victims and different perpetrators.

{¶16} Ohio courts have held that “the act of downloading ‘each file of child pornography’ was done with a separate animus and ‘each downloaded file was a crime against a separate victim or victims.’” *State v. Lautanen*, 2023-Ohio-1945, ¶ 101 (11th Dist.), quoting *State v. Duhamel*, 2015-Ohio-3145, ¶ 62 (8th Dist.). ““Individuals who view *or* circulate child pornography harm the child in several ways,” including “by perpetuating the abuse” and “by invading the child’s privacy.”” (Emphasis sic.) *State v. Vanausdal*, 2016-Ohio-7735, ¶ 13 (3d Dist.), quoting *State v. Starcher*, 2015-Ohio-5250, ¶ 36 (5th Dist.), quoting *Duhamel* at ¶ 61.

{¶17} Davis claims that because the record does not contain proof of the specific time each image was downloaded or first possessed, the convictions are subject to merger because they theoretically could have been downloaded simultaneously. Yet, the record indicates that Davis captured the images at issue by taking screenshots of websites he viewed. Courts have held that “[e]ven a ‘slight’ temporal separation of the offenses can establish separate offenses.” *Vanausdal* at ¶ 14, citing *State v. Norris*, 2015-Ohio-2857, ¶ 18 (8th Dist.) and *State v. Taylor*, 2014-Ohio-3647, ¶ 12 (2d Dist.). Moreover, in *State v. Eal*, 2012-Ohio-1373 (10th Dist.), the Tenth District Court of Appeals held that each individual image

represents “a new and distinct crime” and that “[t]he mere fact that the crimes occurred in quick succession . . . does not mean that they were not committed separately or with separate animus.” *Eal* at ¶ 93, quoting *State v. Blanchard*, 2009-Ohio-1357, ¶ 12 (8th Dist.), *rev’d on other grounds*, *State v. Williams*, 2011-Ohio-3374. Furthermore, courts have held that “a single download of multiple images may result in separate charges for each downloaded image.” *State v. Sargent*, 2025-Ohio-2579, ¶ 33 (7th Dist.), citing *Lautanen* at ¶ 104.

{¶18} The plain-error posture further supports an affirmance. As Davis concedes, he did not object to the refusal to merge at sentencing. “Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” *State v. Campbell*, 2015-Ohio-1409, ¶ 16 (12th Dist.). Here, the record identifies 25 separate images and the controlling merger framework permits separate convictions where the offenses were committed separately, with separate animus, or with separate identifiable harm. Accordingly, Davis is unable to identify any merger error, much less plain error.

{¶19} Davis’s first assignment of error is overruled.

Consecutive Sentencing Review

{¶20} Under R.C. 2953.08(G)(2), an appellate court may reverse a sentence “only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is

otherwise contrary to law.” *State v. Marcum*, 2016-Ohio-1002, ¶ 1. Clear and convincing evidence is that ““which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.”” *Id.* at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

Relevant Authority: Consecutive Sentencing

{¶21} “Except as provided in . . . division (C) of section 2929.14, . . . a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States.” R.C. 2929.41(A). R.C. 2929.14(C) provides:

(4) [T]he court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender’s conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶22} R.C. 2929.14(C)(4) requires a trial court to make specific findings on the record when imposing consecutive sentences. *States v. Hites*, 2012-Ohio-1892, ¶ 11 (3d Dist.). Specifically, the trial court must find: (1) consecutive sentences are necessary to either protect the public or punish the offender, (2) the sentences would not be disproportionate to the offense committed; and (3) one of the factors in R.C. 2929.14(C)(4)(a), (b), or (c) applies. *Id.*

{¶23} The trial court must state the required findings at the sentencing hearing prior to imposing consecutive sentences and incorporate those findings into its sentencing entry. *State v. Sharp*, 2014-Ohio-4140, ¶ 50 (3d Dist.), citing *State v. Bonnell*, 2014-Ohio-3177, ¶ 29. A trial court “has no obligation to state reasons to support its findings” and is not “required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry.” *Bonnell* at ¶ 37.

{¶24} Furthermore, pursuant to R.C. 2953.08(G)(2)(a), appellate court may only “modify or vacate consecutive sentences if it clearly and convincingly finds that the record does not support the trial court’s consecutive-sentence findings.” *State v. Gwynne*, 2023-Ohio-3851, ¶ 24.

Analysis: Consecutive Sentences

{¶25} Davis does not argue that the trial court failed to make the requisite consecutive-sentencing findings under R.C. 2929.14(C)(4). Rather, he contends the record does not support the trial court's findings.

{¶26} At the sentencing hearing, the trial court stated:

The Court finds that consecutive sentences are necessary to protect the public from future crime and to punish the defendant and that consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and to the danger the defendant poses to the public.

The Court further finds . . . that the defendant's history of criminal conduct demonstrates consecutive sentences are necessary to protect the public from future crime by the defendant and, secondly, at least two of the multiple offenses were committed as part of one or more courses of conduct and the harm caused by two or more of the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(Sept. 9, 2025 Tr. at 14-15).

{¶27} Further, the trial court memorialized those findings in its sentencing entry. Accordingly, the record reflects that the trial court made the appropriate R.C. 2929.14(C)(4) findings before imposing consecutive sentences and incorporated those findings into its sentencing entry.

{¶28} Davis argues that the trial court had the option to sentence him to a community-based correctional facility ("CBCF") to allow him to receive treatment. Davis contends that treatment and rehabilitation, rather than punishment, would

have been consistent with the principles and purposes of sentencing. He also submits that because he was not “accused of creating the content found on his phone” and was also not accused of disseminating or distributing the images that were found on his phone the harm he caused was not “so great or unusual” as to justify consecutive sentences. (Appellant’s Brief at 18-19).

{¶29} However, after reviewing the record, we find that the record supports the trial court’s consecutive-sentencing findings.

{¶30} With respect to the necessity and proportionality findings, Davis reasons that because he has expressed a desire for treatment and that placement in a CBCF was a possibility, the trial court erred by not only sentencing him to consecutive sentences, but also to prison. However, the record belies his claims.

{¶31} The investigation unearthed hundreds of images and videos, and the 25 charged counts were based on 25 specific images of prepubescent minors engaged in sexual conduct. Furthermore, the conduct that led officers to initiate an investigation and discover the contraband was witnessed by bystanders at a community parade who observed Davis taking zoomed-in photographs of juvenile female’s buttocks.

{¶32} Davis’s assertion that consecutive-sentences are disproportionate because his offenses were fourth-degree possession offenses, rather than offenses relating to the creation or distribution of such material, also does not establish that

the record clearly and convincingly fails to support consecutive sentences. The trial court imposed a term of 12 months in prison for each count, which is within the statutory range for fourth-degree felonies. The relevant question is not whether a lesser sentence could also have been imposed, but whether this court can clearly and convincingly find that the record does not support the trial court's findings.

{¶33} Moreover, the record supports the trial court's finding that Davis's history of criminal conduct supports consecutive sentences. Davis was convicted in 1999 on eight counts of rape of his daughter and was sentenced to twenty years in prison. Within nine months of his completion of post-release control in August 2024, he committed the present offenses.

{¶34} Furthermore, at the sentencing hearing, Davis explained the depths of his addiction to the trial court:

I was really attempting to try and figure out why I was thinking the way I did back in the 90's . . . that caused me to offend against my daughter. I was basically trying to self-help myself and found this by accident[.] I realize . . . it . . . like [my trial counsel] said, more of an addiction. For some strange reason I couldn't help myself, and I was thinking that this is not really what I want in my life, so . . . I would definitely like to have some serious counseling and some serious mental health help would help me a lot . . . because I kind of really just don't like it anymore. Like I say, it got to the point where it got boring, unexciting, just almost to the point I was hating myself over what I was doing and I just couldn't take it anymore.

(Sept. 9, 2025 Tr. at 7-8).

{¶35} Additionally, the PSI indicates that when Davis was interviewed at the jail, he acknowledged that he had an addiction to child pornography, was interested in minor female's body types, knew the behavior was wrong, and felt that part of him believed that he should spend the rest of his life in prison.

{¶36} The record also supports the R.C. 2929.14(C)(4)(c) finding that the instant cases were committed as part of a course of conduct and that the harm caused by the offenses was so great or usual that no single prison term for any of the offenses committed as part of the course of conduct adequately reflects the seriousness of the offender's conduct. The trial court considered that the offenses were part of a broader course of possessing child-sexual-abuse material. As the State noted it had "not encountered a case where the amount of child porn that [was] found [was] to this level" and described the amount of child sex abuse material found on Davis's phone as "inordinate." (Sept. 9, 2025 Tr. at 4).

{¶37} Furthermore, courts have held that "[e]very video or image of child pornography on the internet constitutes a permanent record of that particular child's sexual abuse. The harm caused by these videos is exacerbated by their circulation." *State v. Sargent*, 2025-Ohio-2579, ¶ 31 (7th Dist.), quoting *Duhamel*, 2015-Ohio-3145, at ¶ 54. As courts have noted, "images depicting rape or abuse," such as the many abhorrent images found on Davis's phone, constitute a particularly exceptional type of harm. *Id.*, citing *Duhamel* at ¶ 55. *See State v. Shiveley*, 2022-

Ohio-4036, ¶ 19 (12th Dist.) (finding possessing sexually explicit photographs of children is a great or unusual harm and noting that the images “have the possibility of living on indefinitely” and “as a result of this permanence, we find it difficult to describe this harm as anything other than extreme, uncommon, and exceptional.”).

{¶38} Accordingly, having reviewed the record, we find that Davis has failed to demonstrate that the record clearly and convincingly does not support the trial court’s consecutive-sentence findings. *See Gwynne*, 2023-Ohio-3851, at ¶ 22.

{¶39} Davis’s second assignment of error is overruled.

{¶40} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the Logan County Court of Common Pleas.

Judgment Affirmed

ZIMMERMAN, P.J. and WILLAMOWSKI, J., concur.

/jlm

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

Mark C. Miller, Judge

William R. Zimmerman, Judge

John R. Willamowski, Judge

DATED:
/jlm